

November 23, 2009

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND RECOMMENDATION

APPLICANT/OWNER: Football Northwest LLC
Attn: Lance Lopes
12 Seahawks Way
Renton, WA 98056

CONTACT: Alan Foltz
Waterfront Construction, Inc.
205 NE Northlake Way, Ste. 230
Seattle, WA 98105

LUA-09-134, EFC, SM, SMC

LOCATION: 12 Seahawks Way

SUMMARY OF REQUEST: Shoreline Conditional Use Permit and a Shoreline Substantial Development Permit for the installation of a pre-manufactured, freestanding platform (boat) lift in association with an existing dock on Lake Washington.

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on November 10, 2009.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the November 17, 2009 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, November 17, 2009, at 9:01 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

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| <u>Exhibit No. 1:</u> Yellow file containing the original application, reports, staff comments and other documentation pertinent to this request. | <u>Exhibit No. 2:</u> Vicinity Map |
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| <u>Exhibit No. 3:</u> Zoning Map | <u>Exhibit No. 4:</u> Plan View |

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| <u>Exhibit No. 5:</u> Detail View and Elevation View | <u>Exhibit No. 6:</u> Platform Lift Assembly |
| <u>Exhibit No. 7:</u> ERC Determination (DNS) | <u>Exhibit No. 8:</u> Shoreline Substantial Development Permit |
| <u>Exhibit No. 9:</u> Picture of Platform Lift in UP Position | <u>Exhibit No. 10:</u> Letter from Washington State Fish and Wildlife stating a HPA would not be required. |

The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98055. The platform lift is 10' x 20' and is proposed to be freestanding, marine grade aluminum that would be operated by non-toxic hydraulic fluid and solar powered. It would sit directly on the lake bottom on four foot pads that would be approximately 12" x 18" and would be on the north side of the existing 150' dock. The boatlift would be approximately 230-240' south of the northerly property line. The installation would be within the established fish window of July 16 through December 31 unless extended by the appropriate agency. The actual installation would take part of one day and would be installed via a construction barge with a barge mounted crane.

The Environmental Review Committee issued a Determination of Non-Significance, no appeals were filed.

The platform lift will be installed as a safety measure. The level of the lake is low for approximately eight months of the year. The level of the deck of the dock is approximately 2.5 feet above lake level and at low water levels it is approximately 4.5 feet above the lake level. This platform lift is intended for smaller vessels to provide a step up to the dock level. The dock is for day use only, no storage of vessels are permitted on the dock, next to the dock or on the platform lift itself.

The Examiner inquired as to how the lift would work and what exactly is the plan for this lift.

Mr. Wasser stated that it would be just on a day use basis where smaller boats, including kayaks would be temporarily moored to the dock, it would be only one vessel at a time.

The project is compatible with the five Shoreline Conditional Use Permit approval criteria which include compatibility with other permitted uses in the area, the use does not interfere with the public use of the shoreline, the design would be compatible with the surroundings and the City's Master Program, the use would be in harmony with the general purpose and intent of the City's Master Program, and the use meets code requirements.

One Misty Cove owner called and complained that the building and platform lift would impede views and light to her property, she further felt that the lift was not necessary and views from her property would suffer as a result of the boatlift. Mr. Wasser stated that he believed the comments regarding the building are untimely since it is an existing use and has already been approved. The boatlift would be a low profile and allows light penetration, no boats would be stored on it. Some views could be impeded due to the construction, but would be very short term.

Alan Foltz, Waterfront Construction LLC, 205 NE Northlake Way, Ste. 230, Seattle 98105 stated that he is a permit coordinator with Waterfront Construction. When the dock was completed and final inspection was done by the City of Renton, the dock was constructed as designed at 2.6" above ordinary high water. In the winter the lake started to go down, and the lake drops about two feet, the client found the dock to be too high off the water and too difficult for people to get onto the dock from a small boat. The platform lift appears to compensate for

the varying levels of the lake and allows small boats including kayaks to reach the dock anytime during the year. The lift would have a grating on top that matches the grating on the dock itself. This lift is very useful due to the safety characteristics. The lift can come to the dock level, but the main intent is to have it at an intermediate level so that it is safer for boaters to use that dock. The top of the lift can be lowered all the way to the lake bottom so it is not a hazard to boats coming alongside the dock. The lift would be lowered just enough for a low draft boat to pull over the lift and be raised to the dock level for safe exiting.

The client would like to have this installed as soon as possible, they would like to have it operating for the 2010 practice season and the work window does not open until July 16. They would like to have this installed prior to the end of December this year. A Corps of Engineer permit has been applied for and a note has been received stating that the boatlift complies with their Regional General Permit 1, which approves boatlifts for Lake Washington. A condition states that if this is the first boatlift for the pier facility, which this is, it can be installed prior to receiving the Corps permit. This lift does comply with RGP1 Category A.

Kayren Kittrick, Community and Economic Development stated everything look good, the Metro sewer line is on the east side of this property but that before doing any work, they should always call before digging or working on the bottom of the lake.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:32 a.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The applicant, Football Northwest LLC, filed a request for a Shoreline Conditional Use Permit as well as a Shoreline Substantial Development Permit to install a boatlift in Lake Washington.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance (DNS).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.
6. The subject site is located at 12 Seahawks Way. The subject site is located west of Lake Washington Boulevard on the shoreline of Lake Washington.
7. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of commercial, office and residential uses, but does not mandate such development without consideration of other policies of the Plan.
8. The subject site is currently zoned COR (Commercial, Office and Residential).

9. The subject site was annexed to the City with the adoption of Ordinance 1823 enacted in April 1960.
10. The subject site is approximately 16.56 acres of 721,580 square feet. A portion of the property extends out into the lake.
11. The Seattle Seahawks Headquarters and Training facility is located on the subject site. An existing 150 foot long dock or pier extends out into the lake. The dock is approximately 250 feet from the north property line.
12. The applicant proposes installing a boatlift near the end of the pier. The boatlift would be installed on the north side of the pier.
13. The boatlift would be approximately 10 feet wide by 20 feet long. It would have a surface area of approximately 200 square feet. The boatlift would be freestanding and portable. It would be constructed of marine grade aluminum. It would have a grated deck that allows light to pass making it less likely to harbor salmon predators. It would rest directly on the lake bottom on four 12-inch by 18-inch footpads.
14. The applicant noted that the lake's surface level varies during the year as the lake is lowered to accommodate increased flows and/or drawdowns. The lift would allow smaller craft to be lifted out of the lake, no matter what the water level is. The lift is intended for interim use to lift smaller, day-craft out of the water so that they can access the overall Seahawks training site. It would be a flat surfaced grate and not contain a cradle. No permanent storage would be accommodated by the lift. It would only be used for day use to allow entry and exit to/from the water.
15. The lift would be installed via a barge. It would take approximately one-day for installation.
16. The work will be done in the time window specified by the state to avoid interfering with salmon activity in the lake. In this case, the applicant hopes to meet the deadline of December 31.
17. Lake Washington's shoreline is classified as a Shoreline of Statewide Significance and therefore any development adjacent to it or, as in this case, in the lake, is subject to the City's Shoreline Master Program. This section of the shoreline is designated as an Urban Shoreline.
18. Docks are permitted in this area of the lake. Boatlifts are not a listed use nor are they a prohibited use and, therefore, are subject to a shoreline conditional use review.

CONCLUSIONS:

1. The criteria for approving a Shoreline Conditional Use permit are twofold. There are City criteria and those City criteria require compliance with additional State criteria. Those criteria are as follows:

Renton: Section 4-9-190.I.5:

5. Conditional Use:

- a. Purpose: Upon proper application, a conditional use permit may be granted. The objective of a conditional use provision is to provide more control and flexibility for implementing the

regulations of the Master Program. With provisions to control undesirable effects, the scope of uses can be expanded to include many uses.

b. Decision Criteria: Uses classified as conditional uses can be permitted only after consideration and by meeting such performance standards that make the use compatible with other permitted uses within that area. A conditional use permit will be granted subject to each of the following conditions:

- i. The use must be compatible with other permitted uses within that area.
- ii. The use will not interfere with the public use of public shorelines.
- iii. Design of the site will be compatible with the surroundings and the City's Master Program.
- iv. The use shall be in harmony with the general purpose and intent of the City's Master Program.
- v. The use meets the conditional use criteria in WAC 173-27-160.

Washington State: WAC 173-27-160:

Review criteria for conditional use permits. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
- (b) That the proposed use will not interfere with the normal public use of public shorelines;
- (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
- (d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- (e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

2. The area in which the subject site is located is zoned to allow commercial, residential and office uses. Docks and piers associated with those types of uses are permitted in the COR zone and have been developed in that zone. Some of those properties with docks have recently received approvals to install boatlifts in combination with those docks. The boatlift proposed by the applicant appears to be compatible with the uses located in this area. It will rise up out of the lake to approximately two feet below the existing dock. In no case will it rise above the level of the dock. The applicant does not intend to use the lift to store boats so no boat or boats will be permanently moored or stored on the lift. Therefore, the profile of structures above the lake will not change other than the potential small craft temporarily located on the lift.
3. The proposed boatlift should not interfere with any public use of the shoreline. The applicant already has a dock and this proposal will add a flat lift. It will not create any additional obstacles toward navigation. This shoreline is privately owned with public access granted by the Seahawks.
4. The lift will be setback from property lines more than required by code and will not create any untoward impacts on adjacent uses or on water-oriented uses.
5. The next series of criteria are contained within the Washington Administrative Code. One of the paramount goals is to protect the ecology of the shoreline. In this case, there should be no change other than some disturbance of the lake bottom but this will occur at a time that limits interference with salmon.
6. The lot, as noted, is private and it extends out into the lake. The proposed lift will serve the lot. Private uses are permitted in this area of the shoreline. The use is similar to those uses permitted in an urban shoreline. The use should not impair the public use of this section of the lakeshore or the water in its vicinity.
7. The low-scale boatlift will not interfere with any uses that might occur in this area of the lake. The comprehensive plan designates this area as suitable for commercial, residential and office uses and the normal complement of accessory uses. On a lakeshore property, piers docks and similar uses including a boatlift are considered reasonable accessory uses.
8. The proposed boatlift should not create any significant adverse affects on the shoreline environment.
9. The installation of the boatlift should not further harm the public interest.

10. As noted in earlier decisions, the analysis of cumulative impact or impacts is hard to judge. A dock already protrudes out into the lake at this location and other docks extend from many of the homes in the area. Clearly, there have had to be impacts to water quality and habitat as a result of motor boating and docks shading the lake and some of the shallow areas. This additional action will probably not have much effect on the overall circumstances.
11. Since boatlifts are neither permitted nor prohibited outright, they do require review under the Conditional Use criteria. The proposal use and restoration are generally consistent with the criteria noted above.

RECOMMENDATION:

The Conditional Use Permit and the Shoreline Substantial Development Permit for the single boatlift should be approved.

ORDERED THIS 23rd day of November 2009.

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 23rd day of November 2009 to the following:

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| Mayor Denis Law | Dave Pargas, Fire |
| Jay Covington, Chief Administrative Officer | Larry Meckling, Building Official |
| Julia Medzegian, Council Liaison | Planning Commission |
| Marty Wine, Assistant CAO | Transportation Division |
| Gregg Zimmerman, PBPW Administrator | Utilities Division |
| Alex Pietsch, Economic Development | Neil Watts, Development Services |
| Jennifer Henning, Development Services | Janet Conklin, Development Services |
| Stacy Tucker, Development Services | Renton Reporter |

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., December 7, 2009** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$250.00 and meeting other specified requirements. Copies

of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., December 7, 2009.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.